IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-737

PAUL WEISS,

Petitioner

against

REVEREND MICHAEL WALSH, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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The petitioner herein respectfully moves this Court for an order vacating its denial of the petition for writ of certiorari, entered on January 15, 1973, and (2) granting the petition. As grounds for this motion petitioner states the following:

1. THE APPEAL TO THIS COURT OF KINGSTON V. Mc LAUGHLIN, NO. 72-3551-F.

On December 19, 1972, following the denial of certiorari in the instant case, a Three Judge Court convened in the United States district court of Massachusetts denied a motion for the continuance of a temporary restraining order and preliminary injunction and dismissed the action on the merits in Kingston v Mc Laughlin, Civil No. 72 3551 F. An application for a stay of the judgement of the Three Judge District Court was denied by this Court on January 8, 1973,

Kingston v Mc Laughlin No. A665. The plaintiffs in said action have an appeal as of right to this Court pursuant to 28 USC §§ 1253 and attorney for petitioner has been informed by counsel that they intend to file an appeal within the 60 day time limit.

Kingston v Mc Laughlin challenges the constitutionality of an article of amendment to the State Constitution of the Commonwealth of Massachusetts requiring the mandatory retirement of all judges upon reaching the age of seventy, without affording them the hearing available under the State Constitution to those under age seventy.

The instant case brought under the Civil Rights Act involves the exclusion of plaintiff from employment solely on the basis of chronological age. Likewise, a full determination of the Kingston case mandates this Court to examine the issue

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of age discrimination which was raised by the amicus curie brief submitted by Legal Services for the Elderly Poor in the District Court. The contentions in both cases are; the denial of equal protection inherent in the classification of exclusion based on age; the irrationality of age classification in general and the arbitrary choice of age seventy in particular: the denial of due process and equal protection in applying an unwarranted irrebuttable presumption of age infirmity without proof of its application or relevance to the individual; the fundamental constitutional guarantee of the right to work in a chosen profession and the invidiousness of a classification which invades or constrains that right.

The close identity of issues in this case and the Kingston case amply justifies a reconsideration of the denial of certiorari here. It would be appropriate

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for this Court to hear and consider the instant case at the same time it considers the Kingston case so that this Court could explore more fully the scope of age discrimination and its ramifications.

Conclusion

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgement and opinion below.

Respectfully submitted,

February 2, 1973

JONATHAN A WEISS

Counsel for Petitioner
2095 Broadway
New York, New York 10023

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instant case at the same time it con-
siders the Kingston case so that this
Court could explore more fully the scope
of age discrimination and its rectification
remedies.

For the reasons set forth above,
as well as those contained in the petition
for writ of certiorari, petitioner prays
that this Court grant rehearing of the
order of denial, vacate that order, grant
the petition and review the judgement and
opinion below.

Respectfully submitted

February 7, 1973

JONATHAN A. WEISS

Counsel for Petitioner
2095 Broadway
New York, New York 10

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

Jonathan A. Weiss

JONATHAN A. WEISS